TRUSTS—CORPORATE STOCK—DIVIDENDS—LIFE TENANT AND REMAINDERMAN.—Plaintiff was trustee, under a will, of a number of shares of corporate stock. In an action to determine the respective rights of the life tenants and remaindermen in an extraordinary cash dividend resulting largely from the sale of gas and electric plants formerly owned and operated by the company as a partial exercise of their corporate functions, *Held,* that such dividend was income and belonged to the life tenants. *Smith* v. *Dana* (1905), — Conn. —, 60 Atl. Rep. 117.

To determine correctly the respective rights of life tenants and remaindermen to stock dividends or extraordinary cash dividends on shares of corporate stock held in trust, is a perplexing problem, and one concerning which there is great conflict. The English courts, following the rule first announced in *Brander* v. *Brander,* 4 Ves. Jr. 801, hold that, an ordinary dividend, whether of cash, stock or property, belongs to the life tenant; while an extraordinary dividend goes to the remainderman. The Supreme Court of Massachusetts, in the case of *Minot* v. *Paine,* 99 Mass. 101, 96 Am. Dec. 705, ruled that all cash dividends should be regarded as income, and all stock dividends as capital; and this irrespective of their origin and amount. This rule has been followed in a number of states, but an inspection of the following cases will show how difficult it is to make any satisfactory classification. *Millen* v. *Guerrard,* 67 Ga. 284, 44 Am. Rep. 720; *Spooner* v. *Phillips,* 62 Conn. 62, 16 L. R. A. 461; *Gibbons* v. *Mahon,* 4 Mackey 130, 54 Am. Rep. 262; *Richardson* v. *Richardson,* 75 Me. 570, 46 Am. Rep. 428; *Greene* v. *Smith,* 17 R. I. 28, 19 Atl. Rep. 1081; *DeKoven* v. *Alsop,* 205 Ill. 309, 68 N. E. Rep. 930, 63 L. R. A. 587. On the other hand, there is a line of cases of which *Earp's Appeal,* 28 Pa. St. 368, is the progenitor, and of which *McLouth* v. *Hunt,* 154 N. Y. 179, 39 L. R. A. 230, is representative, which hold that it is for the court to ascertain the origin of the funds out of which the dividend is declared, and apportion it according to the rights of the parties at that time, regardless of the nature and time of the dividend itself. Many courts have adopted the principles underlying this rule. *Hite* v. *Hite,* 93 Ky. 257, 40 Am. St. Rep. 189, 19 L. R. A. 173; *Peirce* v. *Burroughs,* 58 N. H. 302; *Pritchitt* v. *Nashville Trust Co.,* 96 Tenn. 472, 33 L. R. A. 856; *Thomas* v. *Gregg,* 78 Md. 545, 28 Atl. Rep. 565, 44 Am. St. Rep. 310; *Lowry* v. *Farmers' Loan & Trust Co.,* 172 N. Y. 137, 64 N. E. Rep. 796; but see *Quinn* v. *Safe Deposit & Trust Co.,* 93 Md. 285, 53 L. R. A. 169. The rule of *Minot* v. *Paine* is admittedly a rule of convenience which is liable to work hardship, but finds its justification in that it furnishes a simple guide for a trustee. It is claimed for the rule last above given that it is an equitable rule and that its application will secure justice in every instance. In the principal case the court reviewed some of the above cases which are considered as leading, and followed and approved the rule of *Minot* v. *Paine.* See 2 WILGUS' CORPORATION CASES, 1638; COOK, STOCK AND STOCK HOLDERS AND CORPORATION LAW, §§ 552 et seq.

WAGERING CONTRACT.—Plaintiff, a broker, sues to recover moneys alleged to have been lost in stock transactions on behalf of defendant, and admits that the intent was that, when the transactions were closed, the amount lost or

won was to be determined by the fluctuations of the market. *Held*, a wagering contract is shown, on which plaintiff cannot recover. *Hurd* v. *Taylor* (1905), — N. Y. —, 73 N. E. Rep. 977.

The fact that transactions are closed by the payment of difference does not conclusively establish the fact that the business is that of gambling. *Fox* v. *Steever*, 55 Ill. App. 255. In order to make a wager both parties must intend it to be such, and a contract to sell at a loss is not a gambling contract. *Vigel* v. *Gatton*, 61 Ill. App. 98. Where illegality of consideration is pleaded as a defense to an action on a promissory note, the note imports sufficient consideration, and the burden is on the defendant to show that the consideration was illegal. *Askegaard* v. *Dalen*, — Minn. —, 101 N. W. 503. And where the defense is that the contract is a wagering one, and not intended for the actual sale and delivery of property, it is the duty of the courts to go behind the contract and examine the facts and circumstances which attended the making of it in order to ascertain its true character. *Sprague* v. *Warren*, 26 Neb. 326, 41 N. W. 1113, 3 L. R. A. 679. Courts refuse aid to a party to a gambling transaction, and leave him where he has placed himself. *Thomas* v. *First National Bank of Belleville*, — Ill. —, 72 N. E. 801; *Johnson* v. *Kaune et al.*, 21 Mo. App. 22. If under guise of a contract to deliver goods at a future date the real intent is to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, the whole transaction is nothing more than a wager, and is null and void. *Irwin* v. *Williar*, 110 U. S. 499.

WILLS—ABATEMENT OF PROVISION IN LIEU OF DOWER.—A statute provides that "Where any estate, real or personal, that is devised shall be taken from the devisee for the payment of the debts of the testator, all other devisees and legatees shall contribute their respective proportions of the loss to the person from whom the estate is taken." Rev. Stat. § 5973. Where, among other devises, a will contained a provision in lieu of dower, and a provision for the payment of debts, which latter provision proved insufficient, *Held*, (two justices dissenting), the widow must contribute her proportion to the payment of debts. *Allen* v. *Tressenrider et al.* (1905), — Ohio St. —, 73 N. E. Rep. 1015.

At common law, a widow takes a provision in lieu of dower, not strictly as a legatee or devisee, but as a purchaser for a valuable consideration; hence, such provision does not abate with other legacies or devises to equalize deficiencies. *Clayton* v. *Akin*, 38 Ga. 320, 95 Am. Dec. 393; *Borden* v. *Jenks*, 140 Mass. 562, 5 N. E. Rep. 623, 54 Am. Rep. 507; *Security Co.* v. *Bryant*, 52 Conn. 311, 52 Am. Rep. 599; 3 POM. EQ. JURIS, § 1142. It seems difficult to understand why a statute referring merely to "devisees and legatees" should be held to change this well settled common law rule. Under a similar statute in Connecticut it was held that the provision in lieu of dower does not abate, for the reason that the widow takes the provision in payment for what she relinquishes. *Lord et al.* v. *Lord et al.*, 23 Conn. 327. A few cases may be found which hold, without citing authority for the position, that a widow takes a provision in lieu of dower purely as a devisee subject to pro rata abatement in case of deficiencies. *Chambers* v. *Davis*, 54 Ky. (15 B. Mon.) 522; *Brant* v. *Brant*, 40 Mo. 266.